EXHIBIT 12
DATE 3/30/11
SB 312

MONTANA MINING ASSOCIATION

Response to the Clark Fork Coalition Document Entitled, "Don't Give Mining Companies "Veto Power" Over Montanans' Best Interest."

CFC CLAIM – "Rushes the permit process and prevents DEQ from adding reasonable requirements that protect Montanans and our resources as it learns new information."

MMA RESPONSE – SB 312 does not rush the permitting process at all. In fact, DEQ now has 90 days to complete their application review, where previously they had 60 days. SB 312 ensures that considerable time will be spent by an applicant during the early stages of the application process to confirm that the proper technical analyses, data gathering, scientific and economic studies, and other information has been conducted, compiled, and submitted with an application. The statutory time frame for the completion of the environmental Analysis pursuant to MEPA remains unchanged from current law. That time frame is 365 days or one year and can be extended if needed. Further, DEQ retains the authority to unilaterally implement stipulations to a permit at any time during the permitting process to protect Montanans in accordance with the laws of the State.

CFC CLAIM – "Allows metal mines to change their operating plans or reclamation plans without undergoing a thorough analysis of the impacts. For instance, mines could expand existing operations up to 50 acres without having to undergo ANY environmental review. [82-4-342(4)(g)]

MMA RESPONSE – The current law allows that an environmental assessment or environmental impact statement are not necessary for a limited number of actions that do not impact the environment such as repair or maintenance of existing facilities. The code reference made above is accurate but not complete. Currently, the law allows changes in a permit boundary that increases disturbed acres that are insignificant in impact relative to the entire operation. SB 312 does propose to increase the acreage to less than 50 acres or 10% of the permitted area, whichever is less. At a large mine with a 5000 acre permit boundary, we are talking about a change that is 50 acres or less in size, and the entire mining operation has undergone likely numerous environmental assessments. In addition to the proposed action being insignificant relative to the entire operation, the activity must have already been analyzed in a previous MEPA review. Further, the proposed action must undergo the rigorous review required by the MMRA permitting process and must conclude with a completeness and compliance determination.

CFC CLAIM – Forces DEQ to issue draft mining permits without first ensuring the project also received other relevant permits, like water pollution or air quality permits. [82-4-337(1)(d)(iii)]

MMA RESPONSE – The claim above is not accurate. A draft permit does not authorize any action. The language in SB 312 is clear that a draft permit can be issued and the MEPA review on that draft permit can begin, conditioned upon receiving the other required permits. Under no circumstances can a mine that requires water or air permits commence any activities that require those permits.

CFC CLAIM – Only gives DEQ 90 days to decide whether a mine permit application complies with all the provisions of the Act, and forces them to issue the permit if they can't meet the deadline – even if it's unclear the mine will comply with the law and environmental protections. [82-4-337(1)(g) & (h)].

MMA RESPONSE – Current law allows 60 days for review of an application. Proposed changes allow 90 days for review and the deadline can be extended with permission from the applicant. This review by DEQ is intended to identify potential deficiencies in the application. The applicant is requested to modify or clarify their application to address these deficiencies. If DEQ is not satisfied with the applicant's response, it can issue additional deficiency letters until DEQ is satisfied that the application is complete and compliant. This process can go on indefinitely, or until DEQ is satisfied.

CFC CLAIM – Hands corporate interests "veto power" over any permit requirements it doesn't like, because the DEQ would have to ask the company's permission before taking any precautions that safeguard clean water and communities. "Stipulations" are mine-specific requirements that DEQ imposes in order to ensure a mine will comply with the law. Most permits have several dozen stipulations geared toward protecting communities, water, or wildlife. The company "veto power" would apply to all stipulations. [82-4-337(2)(a)]

MMA RESPONSE – SB 312 is very specific that if a stipulation is necessary to ensure compliance with ANY applicable law, the stipulation can be attached to the permit. The safeguarding of clean water and compliance with the law is not at issue. ALL laws will be complied with. Further, the fact that most permits contain several dozen stipulations is precisely the problem being addresses by SB 312. Currently stipulations are imposed at the end of the permitting process and frequently without any input from the applicant. SB 312 places the burden on the applicant to develop a "compliant" application in the beginning of the permitting process so that DEQ does not have to implement stipulations at the end of the process to ensure compliance with State law. This is an exceptionally important aspect in acquiring financing for a mining operation.

CFC CLAIM – Creates unrealistic burdens on taxpayers to "fix" a mining company's bad application. If a mine proposal will violate the law, DEQ must – within 90 days – provide the mining company with "options" for how to comply with the law. Coming up with these viable options can take many years and hundreds of thousands of dollars of field studies – it's likely impossible for DEQ to offer a viable alternative within 90 days. That's a job for private consultants, not taxpayer-funded public employees. [82-4-337(1)(b)(ii)]

MMA RESPONSE – Agreed; [82-4-337(1)(b)(ii)] was removed. DEQ should not be developing options for the applicant, which is why placement of dozens of stipulations on a permit is also not appropriate.

CFC CLAIM – Once DEQ offers the company an "option" that DEQ says will comply with the law, the company will be off the hook for any future problems or violations that result from enacting that alternative. That doesn't seem fair or responsible.

MMA RESPONSE – This requirement has been deleted from SB 312.

CFC CLAIM – Hand-ties Montanans from reacting to potential future problems by not allowing DEQ to raise additional legal issues later in the permitting process (after the first 90 days), even if the state discovers problems that will blatantly violate the law. [82-4-337(1)(a) & (1)(b)(i)].

MMA RESPONSE – The statement above is not quite accurate. During the DEQ review of an operating permit, the initial notice must note all deficiency notices within the time allotted by statute. This is current law and not a change contained in SB 312. The only change proposed in SB 312 requires the DEQ to review the application not only for completeness but also for compliance with the laws. Additionally, if, during the environmental review, there is need to something to be changed or addressed to ensure compliance with the law, it can and will be required. The DEQ has full authority to deny any permit that does not comply with the law.